

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
) MB Docket No. 13-249
Revitalization of the AM Radio Service)

To: The Commission

JOINT COMMENTS OF AM STATION OWNERS

Radio One Licenses, LLC
Blue Chip Broadcasting Licenses, Ltd.
Multicultural Radio Broadcasting
Licensee, LLC
Way Broadcasting Licensee, LLC
Sacred Heart University, Inc.
Crossroads Communications LLC
CAAM Partnership LLC
WRNJ Radio, Inc.
Renda Broadcasting Corp.
St. Pier Group LLC
Southeastern Oklahoma Radio, LLC
Jackson Radio, LLC
Metro Radio, Inc.
Lieberman Broadcasting, Inc.
Holladay Broadcasting of Louisiana, LLC
Florida Media, LLC
New South Radio, Inc.

Lighthouse Christian Broadcasting Corp.
Great South Wireless LLC
Brantley Broadcast Associates, LLC
Valleydale Broadcasting LLC
Wagon Wheel Broadcasting LLC
Memphis First Ventures, LP
RAMS
Polnet Communications Ltd.
Davidson Media Group
Gow Communications, LLC
WLOH Radio Company
Siga Broadcasting Corporation
Scott Communications, Inc.
Alexander Broadcasting Co., LLC
Alatron, Inc.
Alabama Media, LLC
Radio Training Network, Inc.
Mississippi Broadcasters, Inc.

("Joint Commenters")

The Joint Commenters hereby file Comments to the *Notice of Proposed Rule Making* (“*NPRM*”)¹ in the above referenced proceeding. The *NPRM* offered six proposals to revitalize the AM band and asked interested parties for other ideas. The Joint Commenters would like to express their appreciation to the Commission and, in particular, to Commissioner Pai for recognizing the plight of AM broadcasters and for this opportunity to provide comments on revitalizing the AM service. Unfortunately, AM stations owners do not have their own trade association and cannot afford to hire lobbyists to represent them. They are a diverse group but they can agree that without regulatory relief and long term planning, the future is not bright.

With that in mind, the Commission recognizes in the *NPRM* that it is offering proposals that “could be implemented expeditiously” and other ideas for the “long-term future” would need additional comment, research, and analysis.² The Joint Commenters are generally supportive of the short term proposals offered by the Commission but much more is needed. What AM stations need is a long term solution and the Joint Commenters are filing these comments to express their support for the only proposal offered so far that would provide long term benefits to AM broadcasters—the migration of AM stations to Channels 5 and 6.

I. THE MAJORITY OF THE COMMISSION’S PROPOSALS FAIL TO PROVIDE MEANINGFUL IMPROVEMENT

1. The Commission’s proposals, while well intentioned, will not resolve the proliferation of noise devices that will continue to adversely affect AM listening, the inferior quality of the AM signal, the decline in station values and resulting lack of funds for repairs and maintenance, and the need for detuning whenever there is nearby construction. The proposals to modify the daytime and nighttime community coverage requirements, to eliminate the Ratchet Rule and to modify AM efficiency standards may be of some assistance to those stations seeking

¹ FCC 13-139, released October 31, 2013.

² *NPRM* at para. 45.

to relocate but they provide no relief to the great majority of stations that will remain at their current sites.

2. The most popular proposal among the commenters by far is the FCC's proposal to offer one FM translator for every AM station. But, of course, moving the AM programming over to the FM band does nothing to fix the problems with the AM band. In fact, it will tend to prolong the problems by discouraging AM station owners from spending money to repair or replace equipment as needed. Instead, the AM owner will become more reliant upon its FM service. This proposal is nothing more than a partial step toward transitioning the AM service to the FM band. AM stations are already permitted to rebroadcast on FM translators but only a small percentage have been able to purchase FM translators or found a willing owner within their service contour to rebroadcast their signal. The FCC's proposal to open a window period for existing AM stations to apply for new FM translators may assist some additional AM stations but there is limited spectrum available in most urban areas for FM translators and the proliferation of FM translators will only serve to create more congestion in the FM band. Since AM broadcasters undoubtedly want to transition to the FM band, the Commission should instead seriously consider using Channels 5 and 6, as will be discussed.

II. AM STATION OWNERS FACE A MULTITUDE OF CHALLENGES

3. In the *NPRM*, the FCC recognizes that the AM band is in desperate need of revitalization. AM listenership has dropped precipitously since the 1990s by nearly 50% to 17% among the middle age group and is down to just 4% among the younger generation³ and continues to decline. Indeed, 77% of AM listeners are over 45 years old.⁴ The median listening

³ See *Notice of Proposed Rule Making* at para. 2.

⁴ "AM Radio Starting to Fade Away", Bottom Line Communications, November 12, 2012. 58% are older than 55 and a survey by Mark Kassof & Co. found that 9% of respondents never listen to AM radio and many of them stated they haven't changed the dial from FM in years.

age for AM radio is 57 years old, a full generation older than that of FM radio.⁵ The Commission noted the causes of the decline are a “combination of higher fidelity alternatives to AM radio, increased interference and the loss of young listeners to other programming outlets.”⁶ Others have described the problems as the proliferation of digital devices working against receiving AM signals—light bulbs, iPhone chargers, LED traffic lights, etc.⁷ The proliferation of these devices is not abating. The FCC cannot change the physical properties of the AM band in urban areas. But there is also a problem of perception. When younger people are asked why they do not listen to AM radio, nearly 50% say it is “for older people”, another 41% say “it is boring or out of date”.⁸ These perceptions among the youth are hard to change especially when the programming options are limited by the lower quality fidelity. It is easy to say that good quality programming will attract listeners but that same programming will always sound better on FM. Too often when a popular format is heard on AM, it is not long before that format will air on FM and the listeners will follow to the FM band.

4. In addition, AM station values have declined greatly in recent years. Evidence of the decline can be ascertained from such examples as the AM Auction 84 window filings, the increased number of AM Special Temporary Authority (STA) requests and extensions, and the instances where full service AM stations are swapped for FM translators in the same market. First, with respect to the Auction 84 window filings, over 1300 AM applications were filed in 2004, many more than were expected after the AM window in 2000 produced only 225 applications. AM station values were still decent in 2004. But 10 years later, the FCC staff is still processing these applications and has just scheduled an auction in May, 2014 for 22 groups

⁵ “AM Radio: Where Do We Go From Here?”, Radio World, September 25, 2013.

⁶ *Id.*

⁷ See Radio Ink article October 28, 2011, “What’s Next for AM?”

⁸ “AM... and Millennials??” Mark Kassof & Co, November 21, 2013. The technical problems facing AM radio is only the #3 reason that younger people dislike AM radio according to the survey.

including 57 applicants. The problem is that in 2008, the country went into a recession, radio station values collapsed and lending dried up. As a result, many of the long form applications granted after 2008 have gone unbuilt and permits were cancelled because the cost of construction is higher than the value of the station. Looking at the auction list, the opening bid amounts for the 22 groups range from just \$1,000 to \$25,000. There are some very desirable markets which would be valued much higher if these were FM channels being offered. For example, the markets include Los Angeles (\$25,000) covering 7.5 million persons; Las Vegas, Nevada (\$10,000), Huntsville, Alabama (\$3,500), Colorado Springs, Colorado (\$5,000); Harrisburg-York, Pennsylvania (\$5,000); and Norfolk-Newport News, Virginia (\$10,000). By establishing such low opening bids, the FCC is valuing these frequencies at \$.01 per person and in some cases much less than one cent per person.⁹

5. AM stations are not being repaired and maintained due to the high cost when compared to the value of the repair involved. As a result, the Commission has seen a larger number of STA filings by AM licensees and numerous extension requests. The Commission has no choice but to be lenient with AM station owners and grant these STAs, recognizing their plight. But this leniency only encourages the AM station owner to neglect the station's physical plant and, for those relying on FM translators, there is even less reason to repair the station. By allowing the neglect to continue and by fostering the use of FM translators, the result will inevitably be a further decline in AM station values.

6. In a number of recent transactions, AM station owners have been willing to swap their AM stations for the same price as an FM translator.¹⁰ This has even happened in Top 50

⁹ At p. 9 of the Public Notice, DA 13-2168, released November 18, 2013, the Commission stated that the minimum opening bid amounts were determined "by taking into account the type of service and class of facility offered, market size, population covered by the proposed facility, and recent broadcast transaction data."

¹⁰ Examples of these swaps are available upon request. The licensees prefer that the transactions be kept confidential to avoid embarrassment.

markets. This recent trend demonstrates that the value of the full service AM station is so low in major markets that the owner was unable to sell the AM station for more than an unprotected secondary FM translator license. The question then becomes – have AM stations in effect become the equivalent of a secondary service? Clearly, based on station values, they have.

7. Some commenters in this proceeding believe that digital AM radio will provide a long term solution for the AM service. But for various reasons, including technical inferiority compared to FM digital service and the cost versus the benefits of the investment in HD equipment and licensing fees, AM broadcasters are not jumping on the HD bandwagon and are not likely to do so in the immediate future. However, if given the opportunity to migrate to Channels 5 and 6, the Joint Commenters would be willing to operate in the digital mode.

III. AM STATIONS SHOULD BE PERMITTED TO USE CHANNELS 5 AND 6

8. The Joint Commenters support the comprehensive proposal filed by the Broadcast Maximization Committee (“BMC”) that proposes the migration for AM stations to Channels 5 and 6 on a voluntary basis. That proposal is before the Commission in MB Dockets No. 07-294, et al, (the *Diversity Ownership* proceeding).¹¹ Rather than relying on FM translators, the BMC proposal offers the real thing. Many small business owners, minority owners and new entrants operate AM stations and offer local and news/talk programming for their communities. But no matter how good the programming is, it always sounds better on FM, whether analog or digital. The younger generation listens to FM in far greater numbers than AM. This trend is not likely to change in the future. Mobile devices can offer FM stations but do not have the capacity to offer AM stations.¹² This definitely will not change.

¹¹ See *Report and Order and Third Further Notice of Proposed Rule Making*, 23 FCC Rcd 5922 (2008).

¹² E.g., the NextRadio initiative is putting FM chips in cell phones to receive FM signals but will not be able to accommodate AM signals.

9. The Joint Commenters believe the opportunity to move their stations to channels 5 or 6 is an ideal solution to the problems facing the AM band. They would not mind operating in the digital mode under such circumstances and bypassing the IBOC transition with its inherent problems. Their existing AM facilities with multiple-tower directional arrays that occupy acres of land could be dismantled, the land sold and new facilities located on existing towers reducing the number of existing towers on the landscape. The environmental benefits would be enormous and the cost savings substantial, especially for the landowners.


10. The Joint Commenters are aware that the Commission has been unwilling to consider this concept ever since the DTV transition concluded in 2009, because there are still DTV stations occupying Channels 5 and 6 and the broadband incentive auction and repacking scheme may necessitate using these channels for some existing stations. However, the Joint Commenters have been assured by BMC representatives that they have conducted further studies which confirm that the Channel 5 and 6 space for AM stations can be shared with TV stations that choose to occupy these channels. For example, if a TV station is operating on Ch. 6 in a given market, there should be enough room in the Ch. 5 spectrum for the AM stations in that market.

CONCLUSION

11. The Joint Commenters urge the Commission to seriously consider the use of Channels 5 and 6 for the revitalization of AM stations on a voluntary basis. That usage is exactly what the AM service needs for a long term solution. It provides hope and a reason for struggling AM stations to persist. It is the only long term solution that offers any promise to AM broadcasters looking for a way to compete and attract a younger generation of listeners in the future.

Respectfully submitted,

JOINT COMMENTERS

By: 
Mark N. Lipp
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

Dated: January 21, 2014